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CENTRAL ORGANISATION ECHS

COMPLAINT AND LITIGATION SEC

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B/49717-C/AG/ECHS

09 Oct 15

IHQ of MoD (Navy)/PD ECHS (N)
Air HQ (DAV), SMC Building, Subroto Park
HQ Southern Command (A/ECHS)
HQ Eastern Command (A/ECHS)
HQ Western Command (A/ECHS)
HQ Central Command (A/ECHS)
HQ Northern Command (A/ECHS)
HQ South Western Command (A/ECHS)

**ADVISORY: B/49717-C/AG/ECHS/5-2015 – APPLICABILITY OF
CONSUMER PROTECTION ACT 1986 wrt ECHS**

1. ECHS in a short span of time has got a pan India presence with a very vast membership base. Of late, the litigations are increasing manifold and ECHS functionaries have to deal with a large No of court cases and civil suits including the Consumer Courts . The Consumer Protection Act 1986 is an act to provide for better protection of the interests of consumers by providing simple, speedy and inexpensive redressal for consumers' grievances / disputes and for matters connected therewith. Recently, medical services have also come under the ambit of this amended act.

2. The act provides for a separate three tier quasi judicial consumer dispute redressal machinery at the National, State and District level. For the purposes of this Act, the following agencies, have been constituted :-

(a) Consumer Disputes Redressal Forum to be known as the "**District Forum**" established by the State Government in each district of the State by notification.

(b) Consumer Disputes Redressal Commission to be known as the "**State Commission**" established by the State Government in the State by notification.

(c) **National Consumer Disputes Redressal Commission** established by the Central Government by notification.

3. The District /State/National Forum have the same powers as are vested in a civil court under Code of Civil Procedure and may award monetary compensation. However, they do not assume powers of a writ court. The powers that accrue to the Consumer courts are as under :-

- (a) The summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;
- (b) The discovery and production of any document or other material object producible as evidence;
- (c) The reception of evidence on affidavits;
- (d) The requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
- (e) Issuing of any commission for the examination of any witness,
- (f) Any other matter which may be prescribed.

4. The Act is applicable to the whole of the country except the state of Jammu and Kashmir which has enacted its own statute for consumer protection, namely the Jammu and Kashmir Consumer Protection Act 1987.

5. After due consultation with the JAG, AG's branch, the fwg clarifications are provided for all establishments dealing with ECHS :-

- (a) ECHS members including dependants qualify as consumers as per Sec 2(1) (d) of the amended act.
- (b) Since the Scheme is not a '*free of charge*' scheme, ECHS also qualifies as a service provider under the amended act.
- (c) All personnel in ECHS establishments, whether serving or contractual, are covered under the provisions of applicability of the amended act.

Action to be taken When the Defence of the Suit has been Approved.

6. When the defence of the suit in a consumer court case is sanctioned by the competent authority, the document relating to it will be returned to the officer detailed for

assisting the Government Pleader in the defence of the suit. The officer handling the case will then arrange with the local Government Pleader to prepare the defence and will give him such assistance as may be required. The defence thus prepared will be submitted for the approval of above quoted competent authority and will then be signed and verified by the competent authority and presented in the Court through the Government Pleader. Copies of any additional statement filed by the plaintiff and the issues framed will be obtained from the Government Pleader by the Arm/Service representative who in turn will forward copies of the same without delay to the Area Headquarters (A/ECHS branch) or equivalent and the Dte/branch concerned at Service Headquarters along with copy to Central Org, ECHS for information.

7. As regards cases involving policy or intricate questions of law, the Service/Command Headquarters concerned will submit a brief to Central Org, ECHS who will take the advice of the JAG/ Advice Branch of Ministry of Law if necessary, before forwarding it to the Government pleader.

8. When a case is referred to Central Org, ECHS for getting the draft counter-affidavit vetted by Legal Adviser (Defence), the following information/papers must be invariably placed on the file :-

- (a) Copy of the plaint filed against the Union of India.
- (b) Parawise comments on the plaint.
- (c) A detailed statement of case.
- (d) Draft counter affidavit prepared by the Government Counsel/unit detailed.
- (e) Relevant papers leading to the issue of the departmental order which is the subject matter of the dispute in the court of law, and
- (f) Any documents referred to in the plaint and in the Draft counter affidavit.

9. It is the duty of the officer detailed by the concerned Stn Headquarters to ensure that the Government pleader is thoroughly acquainted with the facts of the case and with the evidence to be adduced. Efforts be made to ensure that no case goes by default due to non-contest at the local station level.

10. Periodical progress reports on all cases filed against or on behalf of the Government will be submitted to the Central Org, ECHS and intermediate formation Headquarters as per policy in vogue vide this HQ letter No B/49714-CC/AG/ECHS dt 14 Sep 15.

Important Points for Continual Attention

11. The following important points relate to the conduct of the suits :-

(a) The averments in a written statement should generally be based in every material point on the evidence which can be adduced in support of them.

(b) The evidence, whether oral or documentary on which it is intended to reply, should be carefully scrutinized by the Government Pleader before it is adduced.

(c) All the evidence should be assiduously collected and made ready for the day fixed for hearing. The necessity of making applications for adjournments should be avoided; such applications on behalf of the opposite party will, unless they are made for sufficient reasons, be resisted as they tend to prolong the litigation.

(d) All documentary evidence should be ready and should be produced at the first hearing of the suit.

(e) Documents filed by the opposite party should be carefully examined at the earliest opportunity and compared with originals in Government records, or with other papers which may tend to establish or subvert their authenticity. Legal notices in such cases need to be studied carefully and replied judiciously and within time limits.

(f) Any information of documents required for the defence of the case with respect to policy may be obtained direct from the concerned section at Central Org, ECHS.

12. As soon as the court has given its decision on the case, the officer detailed to assist the Government Pleader in the defence of the suit will communicate the findings of the court to Area or equivalent Headquarters who in turn will communicate the same to the Dte/Branch concerned at Command Headquarters. The concerned Station Headquarters will also send a copy of the Court's judgement and decree to the Regional Centre who will monitor such cases and keep a record thereof.

Appeals

13. Should a judgement be adverse to the Government, the officer detailed for the defence of the suit will without causing delay, obtain the views of the counsel conducting the case, who should be requested to give reasons for his views, and whether it is a fit case for appeal. The case be defended as in other cases as in vogue keeping Central Org, ECHS informed, within the stipulated time. If an appeal is lodged by the opposite party against a decision, either entirely or partly in favour of Government, the officer detailed for the defence of the suit, in consultation with the Government Pleader, will immediately obtain an uncertified copy of the Memorandum of Appeal and submit to the concerned/parent Headquarters (A/ECHS branch) Area or equivalent Headquarters and Regional Centre.

https://archive.org/details/@oligarchy_of_india

Expeditious Action in Consumer Court Cases.

14. Prompt action will be taken at all levels in dealing with consumer court cases, so that these are not decided against the Government through default. Ex-parte decrees are likely to be awarded by the consumer forums against the Union of India / ECHS if pleas of limitation are not taken by the Station Headquarters. A serious view should be taken of such cases, as judgments, are routinely passed in a shorter time span vis-a-vis civil suits.

(R Malhotra)
Col
Dir (C & L)
for MD ECHS
o/c

Copy to :-

US (WE), MoD
Deptt of ESW

- for info pl.

Judge Advocate General
Room No 400, 'A' Wing, Sena Bhawan
IHQ of MoD (Army)
New Delhi-110011

- for info pl wrt note 2 of noting sheet No B/49714-CC/AG/ ECHS dt 23 Sep 2015.

- 1. For necessary action.

2. The contents may pl be disseminated to all Station HQs under ECHS jurisdiction of your Regional Centre.

(All Regional Centres ECHS)

NOO

Ops & Coord Sec

P & FC Sec

Stats & Auto Sec

Med Sec

- For info pl.